

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application ES-32803.

Affirmed.

1. Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases:
Noncompetitive Leases

Pursuant to sec. 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(b) (1982), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where the lands are determined to be within a known geologic structure prior to issuance of a lease, a simultaneous oil and gas lease application for such lands must be rejected.

APPEARANCES: Larry M. Baer, Esq., Cando, North Dakota, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Charley D. Armey has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated September 13, 1984, rejecting his simultaneous oil and gas lease application, ES-32803.

Appellant's simultaneous oil and gas lease application was drawn with first priority for parcel ES-138 in the July 1983 simultaneous oil and gas lease drawing. The parcel embraced 71.12 acres of acquired land situated in the N 1/2 SE 1/4 sec. 16, T. 16 N., R. 11 W., Michigan Meridian, Newaygo County, Michigan. By memorandum dated January 13, 1984, the BLM District Manager, Milwaukee, Wisconsin, informed the Director, Eastern States, that the lands in parcel ES-138 had been "placed within the boundaries of the Barton Undefined KGS [known geologic structure], effective December 13, 1983." In its September 1984 decision, BLM rejected appellant's simultaneous oil and gas lease application pursuant to 43 CFR 3112.5-2(b) because the land had been determined to be within a KGS and was, thus, subject to leasing only through competitive bidding under 43 CFR Subpart 3120.

In his statement of reasons for appeal, appellant contends that parcel ES-138 is not within a KGS and that, in any case, rejection of his lease application violates his "due process and property rights" and Departmental regulations.

[1] Section 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(b) (1982), provides that lands which are within the KGS of a producing oil or gas field "shall be leased * * * by competitive bidding." See also 43 CFR 3100.3-1. It is well settled that where lands embraced in a noncompetitive oil and gas lease offer are determined to be within a KGS at any time prior to issuance of a lease, the lease offer must be rejected. Evelyn D. Ruckstuhl, 85 IBLA 69 (1985), and cases cited therein; 43 CFR 3112.5-2(b). BLM is also required to reject a simultaneous oil and gas lease application in such circumstances. 1/ Lida R. Drumheller, 63 IBLA 290 (1982). The Department has no discretion to issue a noncompetitive oil and gas lease for KGS lands. McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974); Frederick W. Lowey, 76 IBLA 195 (1983).

Moreover, BLM does not obligate itself to issue a lease merely by selecting applications in the simultaneous system. As we said in Evelyn D. Ruckstuhl, supra at 72-73: "A drawing does not vest in a lease applicant a right, contractual or otherwise, to an oil and gas lease, but merely establishes the priority of filing. R. K. O'Connell, 85 IBLA 29 (1985); Joseph A. Talladira, [83 IBLA 256 (1984)]. McDade v. Morton, supra at 1010." See also Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969). The signing of an offer by an authorized BLM officer is the act that constitutes acceptance of the offer and creates a binding contract. Harry S. Hills, 71 IBLA 302, 305 (1983); see 43 CFR 3112.6-1(a) (lease agreement signed by offeror constitutes "offer to lease").

With respect to the constitutional issue raised by appellant, we note that the decision rejecting appellant's simultaneous oil and gas lease application was clearly correct under the existing statutory authority and regulations promulgated pursuant thereto. See McDade v. Morton, supra. Inasmuch as appellant had no vested right to a lease, there can be no violation of appellant's rights by virtue of rejecting the lease application where such action is required by the statute and duly promulgated regulations. Hence, we conclude that BLM properly rejected appellant's simultaneous oil and gas lease application. 2/

1/ Rejection is also mandated by 43 CFR 3112.5-1(a), which requires rejection of lease applications which do not meet "the requirements of Subpart 3112 of this title," including 43 CFR 3112.1-1(a). The latter regulation provides in relevant part that leasing under the simultaneous system applies to "lands which are not within the known geological structure of a producing oil or gas field." (Emphasis added.)

2/ Appellant has also challenged the KGS determination but has provided no evidence that the determination was in error. The burden to demonstrate error is on appellant and, where appellant fails to make even a minimal showing in support of the allegation of error, we will uphold the KGS determination. Stephen M. Naslund, 79 IBLA 252 (1984).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Bruce R. Harris
Administrative Judge

